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PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) 2005_1603A	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature_____ Typed or printed name _____	Application Number 10/552,371	Filed February 10, 2006
	First Named Inventor Hiroshi YAHATA	
	Art Unit 2621	Examiner Dang, Hung Q.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
      Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
   See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
   (Form PTO/SB/96)

☑ attorney or agent of record. 45,336
   Registration number _____

☐ attorney or agent acting under 37 CFR 1.34.

   Registration number if acting under 37 CFR 1.34 _____

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December 2, 2008
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NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☑ *Total of 1 forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : **Confirmation No. 7254**

Hiroshi YAHATA et al. : Attorney Docket No. 2005_1603A

Serial No. 10/552,371 : Group Art Unit 2621

Filed October 7, 2005 : Examiner Hung Q. Dang

INFORMATION RECORDING : **Mail Stop: AF**
MEDIUM, AND APPARATUS AND
METHOD FOR RECORDING
INFORMATION TO INFORMATION
RECORDING MEDIUM

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
    P.O. Box 1450
    Alexandria, VA 22313-1450

Sir:

    This is a pre-appeal brief request for review of the rejection under 35 U.S.C. §103(a) of claims 6 and 11 as set forth in the final Office Action dated October 15, 2008. No amendments are being filed with this request. This requested is being filed concurrently with a Notice of Appeal. The request for review of the rejection is based on the following:

I. Claim Rejection under 35 U.S.C. §103(a)

    The Examiner has rejected claims 6 and 11 under 35 U.S.C. §103(a) as being unpatentable over Ohiro (US 2003/0170008) in view of Morris (US 6,873,629) and Imahashi (US 6,438,317). Appellants respectfully traverse this rejection on the following basis.

A. Claim 6

    Claim 6 is drawn to an information recording apparatus including first and second encoding sections that perform encoding in accordance with the claimed constrained format of MPEG-TS. Specifically, the combination of Ohiro, Morris and Imahashi fails to disclose or suggest that a predetermined number of first packets including either video information or audio information are grouped and managed as a multiplexing unit, a total payload data size of first packets managed in the multiplexing unit is smaller than a payload data size of a pack, the multiplexing unit is a

processing unit to convert a first format (TS) (i.e., MPEG-TS) to a second format (PS) (i.e., MPEG-PS), and a first one of complete audio frames in the multiplexing unit including only the audio information is a first one of audio frames in a payload of a second packet (i.e., PES packet). The combination of Ohiro, Morris, and Imahashi fails to disclose or suggest these features.

Regarding Ohiro, Appellants note that this reference discloses a video recording apparatus including an MPEG encoder 103 for converting a digital signal into a program stream (PS) and a TS/PS conversion unit 105 for converting a transport stream (TS) into a program stream (PS) (see paragraph [0050]). As explained in Ohiro, a user of the video recording apparatus can switch between recording data as a transport stream (TS) or a program stream (PS) on a recording medium 109 depending on a number of factors (see paragraph [0051]).

Thus, while Ohiro discloses the recordation of data using both a transport stream (TS) and a program stream (PS), Appellants note that Ohiro does not disclose or in any way suggest the use of a constrained format associated with the transport stream whereby a predetermined number of first packets including either the video information or the audio information are grouped and managed as a multiplexing unit, a total payload data size of first packets managed in the multiplexing unit is smaller than a payload data size of the pack, the multiplexing unit is a processing unit to convert the first format (TS) to the second format (PS), and a first one of complete audio frames in the multiplexing unit including only the audio information is a first one of audio frames in a payload of the second packet.

Regarding Imahashi, Applicants note that this reference discloses a transmission system 1 that includes an encoding system 1B that is controlled by a CPU 11 (see column 6, lines 33-41). The encoding system 1B includes a video encoder 16 and an audio encoder 17 that output a video elementary stream and an audio elementary stream, respectively (see column 6, lines 16-32). The encoding system also includes a transport stream multiplexer (TSMUX) 22 for generating a transport stream (TS) by multiplexing the packetized video and audio elementary streams from the video encoder 16 and the audio encoder 17 (see column 16, lines 16-32).

Thus, while Imahashi discloses the ability to generate a transport stream (TS) by multiplexing audio and video elementary streams, Appellants note that Imahashi does not disclose or in any way suggest the use of a constrained format associated with the transport stream whereby a predetermined number of first packets including either the video information or the audio information are grouped and managed as a multiplexing unit, a total payload data size of first packets managed in the multiplexing unit is smaller than a payload data size of the pack, the multiplexing unit is a processing unit to convert the first format (TS) to the second format (PS), and a first one of complete audio frames in the multiplexing unit including only the audio information is a first one of audio frames in a payload of the second packet.

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In the Office Action, the Examiner has recognized the above-noted deficiency of Ohiro. Further, the Examiner has relied upon Imahashi as disclosing another feature of the invention as recited in claim 6, and therefore, implicitly indicated that Imahashi fails to address this deficiency of Ohiro. Therefore, the Examiner has applied the Morris reference and taken the position that Morris cures this deficiency of Ohiro. Appellants respectfully disagree.

Regarding Morris, Appellants note that this reference discloses an apparatus that converts a data stream having an MPEG-2 transport stream (TS) into a data stream having an MPEG-2 program stream (PS) (see Abstract). The transport stream (TS) is a continuous stream of transport packets (T-PKTs) each comprising 188 bytes of data (see column 5, lines 22-40). The transport stream (TS) includes a number of programs (PROG 1, PROG 3) multiplexed in the stream (see column 5, lines 41-63). Each multiplexed portion of the programs (PROG 1, PROG 3) includes a number of transport packets (T-PKTs) (see column 5, lines 41-63). Each of the transport packets (T-PKTs) has a field PID indicating which elementary stream the transport packet (T-PKT) relates (see column 5, lines 41-63). For example, the transport packets (T-PKTs) associated with PROG 1 are a video stream (PID='05'), an audio stream (PID='06'), and a teletext data stream (PID='07') (see column 5, lines 41-63). Further, the transport packets (T-PKTs) each comprise elementary stream packets (PES-PKTs) (see column 5, line 64 – column 6, line 2).

The program stream (PS), to which the transport stream (TS) is converted, includes a number of packs (PACKs) (see column 7, lines 11-26). Each pack (PACK) includes a number of consecutive packetized elementary stream packets (PES-PKTs) of a single type of elementary stream (e.g., video stream or audio stream) (see column 7, lines 11-26).

Thus, while Morris discloses a specific format of the transport stream (TS), Appellants note that Morris does not disclose or in any way suggest the use of a constrained format associated with the transport stream whereby a predetermined number of first packets including either the video information or the audio information are grouped and managed as a multiplexing unit, a total payload data size of first packets managed in the multiplexing unit is smaller than a payload data size of the pack. Regarding this, the transport stream (TS) of Morris includes transport packets (T-PKTs), which are relied upon in the rejection as corresponding to the claimed first packets, that alternate between video, audio, and teletext data one by one (see Figure 2). Therefore, it is apparent that there is no grouping of transport packets (T-PKTs) including either video information or audio information as would be necessary to form the claimed multiplexing unit.

Further, the claimed multiplexing unit is recited in claim 6 as being a processing unit to convert the first format (TS) to the second format (PS). Morris discloses that the program stream (PS) includes groups of four PES packets (PES-PKTs) of a same elementary stream (e.g., video or audio) as a pack (PACK). These groups of four PES packets (PES-PKTs) of a same elementary stream form a processing unit with respect to the program stream (PS) when the transport stream

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(TS) is converted to the program stream (PS). However, as discussed above, since the transport packets (T-PKTs) in the transport stream (TS) alternate between video, audio and teletext data elementary streams, the multiplexing unit of the transport stream (TS) can only be said to include one transport packet (T-PKT), which is clearly does not correspond to the four PES packets (PES-PKTs) of each of the packs (PACKs) of the program stream (PS). Due to this inconsistency between the one transport packet (T-PKT) (i.e., multiplexing unit) in the transport stream (TS) and the four PES packets (PES-PKTs) (i.e., processing unit) making up the pack (PACK) in the program stream (PS) in Morris, it is apparent that Morris does not disclose the manner of conversion as recited in claim 6.

Additionally, claim 6 recited that a first one of complete audio frames in the multiplexing unit (that includes plural first packets) including only the audio information is a first one of audio frames in a payload of the second packet (i.e., a PES packet). As discussed above, the multiplexing unit of the transport stream (TS) of Morris can only be said to include one transport packet (T-PKT). Also, there is nothing in Morris that discloses or suggests that a first complete audio frame in a transport packet (T-PKT) including audio data is the first audio frame in a PES packet (PES-PKT). Therefore, Morris also fails to address the deficiency of Ohiro.

In view of the foregoing, Appellants respectfully submit that the combination of Ohiro, Morris and Imahashi does not teach, suggest or otherwise render obvious the features of a predetermined number of first packets including either video information or audio information being grouped and managed as a multiplexing unit, a total payload data size of first packets managed in the multiplexing unit being smaller than a payload data size of a pack, the multiplexing unit being a processing unit to convert a first format (TS) (i.e., MPEG-TS) to a second format (PS) (i.e., MPEG-PS), and a first one of complete audio frames in the multiplexing unit including only the audio information is a first one of audio frames in a payload of a second packet (i.e., PES packet), as recited in claim 6.

Accordingly, Appellants submit that claim 6 is patentable over the cited prior art, an indication of which is kindly requested.

B. Claim 11

Regarding claim 11, Appellants note that this claim recites the features of a constrained format associated with a transport stream, grouping and managing a predetermined number of first packets including either the video information or the audio information as a multiplexing unit, a total payload data size of first packets managed in the multiplexing unit being smaller than a payload data size of a pack, the multiplexing unit being a processing unit to convert a first format (TS) (i.e., MPEG-TS) to a second format (PS) (i.e., MPEG-PS), and a first one of complete audio

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frames in the multiplexing unit including only the audio information is a first one of audio frames in a payload of a second packet (i.e., PES packet).

For at least the same reasons as discussed above with respect to claim 6, Appellants submit that the combination of Ohiro, Morris and Imahashi does not teach, suggest or otherwise render obvious at least the above-noted features recited in claim 11. Accordingly, Appellants submit that claim 11 is patentable over the cited prior art, an indication of which is kindly requested.

II.   Obviousness-Type Double Patenting

Claims 6 and 11 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2 and 3 of Application No. 11/594,161 in view of Morris and claims 2 and 3 of Application No.11/594,137 in view of Morris.

Without acquiescing to the provisional obviousness-type double patenting rejections, it is noted that Application Nos. 11/594,161 and 11/594,137 were filed after the filing of the present application. Therefore, in accordance with M.P.E.P. §804(I)(B)(1), when the provisional obviousness-type double patenting rejections become the only remaining rejections in this application, the provisional obviousness-type double patenting rejections should be withdrawn and the application should be permitted to issue as a patent without a terminal disclaimer. As a result, the Applicants hereby request that the provisional obviousness-type double patenting rejections be held in abeyance.

III.   Conclusion

In view of the foregoing, Appellants respectively submit that claims 6 and 11 are patentable over the prior art references cited by the Examiner. Accordingly, reconsideration of the rejection set forth in the final Office Action is respectfully request.

Respectfully submitted,

Hiroshi YAHATA et al.

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